

Monitoring & Status Updates of Land Interests Acquired Through the NH Land Conservation Investment Program

Fiscal Year 2017 - 7/1/2016 to 6/30/2017



McDanolds Conservation Easement, Haverhill

*Submitted to
The Council on Resources and Development
by the
Conservation Land Stewardship Program
NH Office of Strategic Initiatives
January 11, 2018*



TABLE OF CONTENTS

I. INTRODUCTION.....	3
II. BACKGROUND.....	3
III. PROGRAMMATIC ACTIVITIES / STATUS.....	5
IV. LAND CONSERVATION ENDOWMENT.....	7
V. CONCLUSION.....	8

Appendix A – State Conservation Easement Monitoring Status

Appendix B – Municipal Lands Monitoring Status

Appendix C – State Fee-Owned Properties Managed by NH Fish and Game

Appendix D – State Fee-Owned Properties Managed by DNCR, Div. of Forests & Lands

Appendix E – Land Conservation Endowment Summary

***Cover Photo:** During our annual monitoring in 2017 CLS staff met Richard McDanolds working Sawyer Meadow on his 1948A John Deere. An extremely important part of conservation easement stewardship is the relationship with the landowner. These individuals often have interesting stories they like to share. Purchased in 1949, the tractor now has 28,000 hours. In 1934, on his father’s farm, milk was selling at \$1.26/hundred lb. Today it is selling for about \$16/hundred. In the winter of 1943 the temperature in Haverhill reached 47 degrees below zero, and the milk train was still able to make its run from Newport, Vermont to Boston. Richard will turn 89 next October. Photographs of property features are an important part of the annual monitoring record.*

I. INTRODUCTION

This annual report is required by statute under RSA 162-C:8, IV. It provides background information on the Land Conservation Investment Program,¹ a listing of all lands and interests in lands subject to the monitoring provisions of the statute, summaries of monitoring activities for the protected lands, and a financial accounting of the funds in the Land Conservation Endowment for the most recent fiscal year. By statute, this report is to be presented no later than December 1 of each year to the Speaker of the House, the President of the Senate, the Governor, the House Clerk, the Senate Clerk, and the State Library.

II. BACKGROUND

The Land Conservation Investment Program (LCIP) was established by the Legislature in 1987. The LCIP resulted from a broadly supported land protection bill signed into law at a time of unprecedented development and growth in New Hampshire. Between 1987 and 1993 the Land Conservation Investment Program, in cooperation with the Trust for New Hampshire Lands (a private partner), permanently protected approximately 100,000 acres of land. By the end of the acquisition phase of the program, the state's contribution to this effort was over \$48 million. These public funds, in addition to \$3.2 million in private donations, resulted in acquisition of lands valued at over \$83 million, permanently protecting some of New Hampshire's finest and most pristine lands. This significant land protection effort is considered to be one of the most successful and wide reaching public-private conservation partnerships in the State's history.

On July 1, 1993, authority for the Land Conservation Investment Program was transferred from the LCIP Board of Directors to the Council on Resources and Development (CORD) in accordance with the former RSA 221-A (now RSA 162-C). Under RSA 162-C CORD is responsible for maintaining and protecting the benefits derived from land interests acquired through the LCIP, and for ensuring that the lands remain in their intended conservation use in perpetuity. CORD is made up of representatives of a dozen state agencies and was established under RSA 162-C to consult upon common issues related to environmental protection, natural resources and growth management. Among other duties, CORD has the statutory responsibility of managing and administering LCIP lands so as to preserve the natural beauty, landscape, rural character, natural resources, and high quality of life in New Hampshire as well as maintaining and protecting benefits derived from such lands and maintaining public access to such lands, where appropriate. CORD is chaired by the Director of the Office of Strategic Initiatives.

In transferring authority to CORD under RSA 162-C:6, the Legislature reaffirmed the conservation purposes of the LCIP, and the need to respect investments in the conservation of natural resource lands in the state for the perpetual use of the people of New Hampshire. The Legislature also recognized that the LCIP was undertaken in part with significant donations of cash and land value by citizens of the state who intended that the conservation values of these lands be protected in perpetuity. Land and easements acquired through the Program are held in public trust, and any proposed uses or impacts must be consistent with the statute and the purposes for which the land was conserved. In addition, the sale, transfer, conveyance, or release of any such land from the public trust is prohibited, except in

¹ Although in many ways the Land Conservation Investment Program was a predecessor to the current Land and Community Heritage Investment Program, known as "LCHIP," the former Land Conservation Investment Program should not be confused with this newer land and historic property protection program.

very limited circumstances as specifically outlined in the statute.

CORD also has fiduciary responsibility for oversight and administration of the monitoring endowment. The monitoring endowment was established in 1993 to provide a perpetual source of income for monitoring and enforcement of State held easements acquired through the Program, and to provide oversight and assistance to the 78 municipalities that acquired land interests through the program. Income from the endowment ensures that the State is able to meet its legal obligation to protect the conserved values of these properties in perpetuity. The principal of the stewardship endowment at the time it was set up in 1992 was approximately \$1.2 million.

LCIP lands are protected either through fee-ownership (where the state or municipality owns the land) or through a conservation easement (where the land remains in private ownership and the state or municipality holds a legally binding conservation easement deed restricting the activities on and uses of the property). In both fee and easement acquisitions, conservation restrictions placed on the property remain in place in perpetuity. In addition, most lands protected through the program are open to public pedestrian access for passive, transitory activities such as walking, fishing, and hunting, and most properties allow for uses such as forestry, agricultural and other forms of non-commercial recreation.

Each state held property, either fee-owned or easement, was assigned by the original LCIP Board of Directors to the NH Fish and Game Department (Fish and Game), the Department of Natural and Cultural Resources (DNCR, fka - Department of Resources and Economic Development), or the Department of Agriculture, Markets, & Food (Department of Agriculture), depending on the resource values and uses of the land.² The state fee-owned properties are integrated into those agencies' land management systems, although they still remain subject to the statutory requirements established for the program under RSA 162-C, including being under CORD's jurisdiction.

The Conservation Land Stewardship (CLS) Program, which is housed in the NH Office of Strategic Initiatives (OSI, fka - NH Office of Energy and Planning), monitors and stewards the 86 state-held Land Conservation Investment Program conservation easements, in consultation with the original assigned agencies, and oversees the 246 municipal-held interests acquired through the program.³ Housing the monitoring of all conservation properties under one roof minimizes duplication of effort, gives CORD and the public a single point of contact regarding LCIP issues, enables cost-saving efficiencies, allows the same stewardship standards for all lands, and helps to provide a consistent interpretation of easement language for the landowners and communities. The name of the program was changed to CLS from the Land Conservation Investment Monitoring Program in 2004 to reflect the growth and added responsibilities of the program through the addition of agreements with agencies to monitor and steward non-Land Conservation Investment Program conservation easements, and to distinguish it from the current Land and Community Heritage Investment Program (LCHIP).

RSA 162-C:8, IV requires that an annual report be prepared summarizing monitoring activities and findings for each LCIP property during the most recent fiscal year and a financial accounting of the funds in the monitoring endowment. OSI oversees expenditures of income (as approved by CORD)

² There are also two preservation restriction easements that were acquired through the program that were assigned to the Department of Cultural Affairs, Division of Historical Resources.

³ A limited number of conservation easements allow subdivisions. The conservation easements remain in full effect in perpetuity. However, the subdivisions increase the ownership base, effectively increasing the number of conservation easements to track.

and execution of endowment responsibilities, with the exception of financial management, which is provided by the State of NH Department of Treasury.

III. PROGRAMMATIC ACTIVITIES / PROPERTY STATUS

The goal of the CLS Program is to ensure that the conserved values of state-held easements and locally-held interests are not diminished over time. To accomplish this, CLS staff monitors all LCIP state-held easement properties on average once every 12 to 16 months. *Appendix A* provides a list of the town, easement name, property acreage, the date of the last monitoring visit, and status update notes for each state-held easement.

Easement monitoring involves contacting landowners to discuss their plans for the property, documenting any changes to the property's condition (either as a result of natural causes or by land management activities), ensuring that activities are in keeping with the terms of the easements, and inspecting active property boundaries to ensure that there are no encroachments or violations caused by others. Additional property visits or meetings are conducted as necessary to provide resource assistance to landowners and municipalities, or to resolve issues. Detailed reports are prepared for each property, including photo documentation and GIS/GPS maps as necessary. These reports become part of the permanent record for each easement. Monitoring and documentation protocols are designed to align with nationally recognized standards of practice for conservation easement monitoring and stewardship.

During this fiscal year, for the second time the CLS Program employed a seasonal intern for 12 weeks during the summer months. This has proven to be a particularly cost effective way to help manage the seasonal workload fluctuations of the program, which tend to be more field intensive during the spring, summer, and fall. The Program has budgeted for and intends to continue employing a seasonal intern in future years, in part to keep pace with additional conservation easements and their complexities.

Early in the CLS Program aerial monitoring was conducted in addition to on-the-ground monitoring of many of the state held easements. Today the Program supplements on-the-ground monitoring with review of the most up-to-date digital aerial imagery available through GRANIT as well as Google Earth Pro. GRANIT imagery is incorporated into existing ArcGIS projects for each conservation property and both forms of aerial imagery are included as part of the monitoring report as appropriate. The program will continue to migrate toward newer technologies as they become available and are practical to gain efficiencies and maintain standards.

In addition to annual monitoring of state-held easements, the CLS program provides oversight of the 246 municipally held fee-owned and conservation easement properties, which total 23,471 acres of conserved land. These properties are monitored annually by the municipalities themselves (typically conservation commission volunteers) and once every four to six years a Field Visit is conducted by CLS staff, or more frequently if needed. Emphasis is placed on contacting and/or visiting those municipalities where annual reporting is absent for one or more years or other concerns may be noted.

The 78 municipalities involved in the program are contacted annually by CLS staff to request updated contact information, provide monitoring report forms, to remind them of their responsibility to monitor, and to offer technical assistance if necessary. Additional contact through periodic newsletters

is made throughout the year to offer resource support information and reminders. All municipal monitoring reports are reviewed and tracked in the program's database and additional follow up contact is made with communities if reports have not been received. When issues are reported, with no apparent action to resolve them, CLS staff will contact the municipality for further information.

Appendix B provides a list of the town, easement/property name, property acreage, the date of the last monitoring reported by the town to CLS, and status update notes. Municipal properties that were also visited by CLS staff during the last fiscal year are noted in bold italics in Appendix B. Typically the municipality is notified in advance of a Field Visit and encouraged to meet with CLS staff.

For both state-held and municipally-held easements, there is a general trend toward an increasing number of questions and possible challenges of conservation easements as properties change hands from the original grantor to others with potentially different goals for the property. CLS staff meets with new landowners of state-held easements as soon as possible after they become aware an easement property has transferred ownership. This is to introduce them to the program, discuss their easement, and to foster a strong sense of conservation stewardship ethic and responsibility for the long-term protection of their newly acquired property. This early contact is an increasingly essential component of ensuring long-term protection of conservation easements. For municipal-held easements CLS will typically provide an introductory letter to the new landowner, through the municipality, so they understand the State's relationship to their property and the conservation context.

If problems are discovered during monitoring, in most cases CLS staff is able to work with the landowner (or municipality) to resolve the situation. In the few instances where resolution cannot be achieved, other legal remedies may be pursued in coordination with CORD and the NH Department of Justice. In addition, as interpretation and potential enforcement issues become more challenging and complex, CLS staff is increasingly working with the assigned state agencies, CORD, the Department of Justice - Environmental Protection Bureau, and the Department of Justice - Charitable Trusts Unit.

State fee-owned lands acquired through the LCIP, which total 50,572 acres, are not monitored by CLS but are instead managed directly by the assigned agencies (DNCR or Fish and Game) through their existing land management systems, with assistance from CLS when appropriate. Many of these fee-owned acquisitions resulted in significant additions to previously existing protected state lands, such as the Heath Pond Bog Natural Area and the Jones Brook Wildlife Management Area, or access to public waters. Others resulted in creation of new state forests, state parks, or wildlife management areas. Examples include Nash Stream Forest (39,987 acres), Umbagog State Park (1,089 acres), and the Enfield Wildlife Management Area (1,096 acres). Even though these fee-owned properties are incorporated into the agencies' individual land management systems, they still remain subject to the statutory requirements established for the program under RSA 162-C and oversight by CORD. **Appendices C and D** are updates from Fish and Game and DNCR detailing the current status of each fee-owned property that has been assigned to their respective agencies for management.

IV. LAND CONSERVATION ENDOWMENT⁴

The Land Conservation Endowment continues to be managed by Fidelity Portfolio Advisory Services under the supervision of the State Treasury Department, using a “growth with income” strategy with a mix of 60% equities, 35% bonds, and 5% money-market funds. This investment strategy was approved by CORD at its September 2, 2010 meeting and the custodial agreement with the Treasury Department was last renewed at its March 2015 meeting. CLS/OSI staff meets periodically with staff from the Treasury Department to review the endowment’s investment performance.

Land Conservation Endowment income is disbursed annually, incorporated into the approved CLS Program budget, and used to support costs associated with monitoring and stewardship of state-held easements and providing oversight and technical assistance to the 78 municipalities that acquired land interests through the LCIP. Generally, no more than 4% - 5% of the endowment’s 12-quarter rolling average market value is disbursed in any given year, as recommended by the Treasury Department, to ensure that the fund can continue to produce income in perpetuity for its intended purpose as required by the statute. For fiscal year 2017, \$154,099.41 was disbursed from the endowment for expenses. A summary report for the last fiscal year is provided in *Appendix E*.

Since 2008, CORD and OSI have entered into Memoranda of Agreements (MOAs) with the Department of Agriculture (pending renewal), NH Fish and Game, and DNCR to allow acceptance of additional contributions into the Land Conservation Endowment for monitoring selected new non-LCIP state-held easements. These easements include an up-front contribution or donation to help cover the costs of long-term monitoring and enforcement. In most cases, these MOAs stipulate that the CLS Program will be responsible for long-term monitoring of these easements. These new conservation easement lands often either abut or are very close to other easement lands that the CLS program is already responsible for monitoring, which results in the efficient use of state resources. Since 2008, over \$302,000 in additional funds have been contributed to the endowment to help support the monitoring of 20 new state-held conservation easement projects. These contributions into the LCE are incorporated into the investment as a whole, and they are tracked individually.

⁴ The “monitoring endowment” referenced in RSA 162-C, and overseen by CORD, is managed as two separate accounts at the Treasury Department. The “Land Conservation Endowment” account is used for the purposes of monitoring state-held conservation easements acquired through the former Land Conservation Investment Program. The second, the “Community Conservation Endowment” account, is used for the purposes of RSA 227-M:12 – for monitoring costs associated with the current Land and Community Heritage Investment Program. Additional information pertaining to the “Community Conservation Endowment” portion of the monitoring endowment will be contained in the Land and Community Heritage Investment Program’s annual report.

V. CONCLUSION

Lands and interest in lands acquired through the Land Conservation Investment Program are held in public trust per RSA 162-C:10 and provide significant public benefit to the people of New Hampshire. Stewardship and monitoring responsibilities are becoming increasingly important as easements age and land ownership changes to new landowners who may not understand the legal significance of the restrictions or the unique protected conservation values of the property. The first conservation easements acquired through the program was in 1988. Over 65% of all state-held easement properties have transferred from the original grantor to a new owner, and some have transferred multiple times.

In addition, the trend in conservation easement stewardship is toward increasing numbers of questions and possible challenges. Unlike some modern easements, Land Conservation Investment Program easements often don't directly address certain issues that may not have been contemplated when these easements were written. Some examples include activities such as agritourism or the use of modern alternative energy systems (such as small-scale wind turbines or solar panels) to power farming or other operations. In addition, public perceptions and expectations related to the use of conservation easement lands continue to change over time. This sometimes results in increased conflicts among public users, or between public users of the property and the private landowner of the conservation easement land. This often requires the involvement of the easement holder (state or municipality), which is charged with interpreting the public access provisions of the easement.

Most recently, large-scale proposed energy projects such as Northern Pass have come to the attention of the program, since they may have the potential to impact conservation lands acquired through the LCIP. The Tennessee Gas Northeast Energy Direct Pipeline project, which has since been withdrawn, also had potential impacts to conservation lands acquired through the LCIP. This topic will continue to require significant involvement of state staff, CORP, and the Department of Justice to ensure that permitting authorities understand the protections on these lands and the processes that must be followed if they are to be impacted, and to work to seek alternatives that minimize impacts to these properties.

In addition, items such as changing demographics, recreational trends, changing weather patterns, invasive flora and fauna, among other items will likely have a profound influence on the stewardship tasks. Technological advances will also offer both new challenges and opportunities.

All of these issues make long-term stewardship of Land Conservation Investment Program easements and fee-ownership interests, increasingly more challenging as time goes by. Ensuring good communication through direct landowner contact, regular monitoring, and timely informal resolution of issues when possible continues to be the most cost-effective and efficient method for long-term protection of conservation land interests. This approach also helps to ensure that the State is meeting its legal obligations to permanently protect resources acquired through the Land Conservation Investment Program in the spirit of the original acquisition.

A special thanks goes to Tracey Boisvert who at the end of the fiscal year finished an almost ten year term as the CLS program director.